

IC 15-3-3.6

Chapter 3.6. Pesticide Use and Application

IC 15-3-3.6-1

Administration by state chemist

Sec. 1. This chapter shall be administered by the state chemist of the state of Indiana hereinafter referred to as the "state chemist".

(Formerly: Acts 1975, P.L.134, SEC.1.)

IC 15-3-3.6-2

Definitions

Sec. 2. As used in this chapter:

- (1) "Agricultural commodity" means any plant, or part of a plant, and animals or animal products produced primarily for sale, consumption, propagation, or other use by man or animals.
- (2) "Animal" means all vertebrate and invertebrate species, including man and other mammals, birds, fish, and shellfish.
- (3) "Beneficial insects" means insects that, during some part of their life cycles, are effective pollinators of plants, are parasites or predators of pests, or are otherwise useful to man.
- (4) "Board" means the Indiana pesticide review board established by IC 15-3-3.5.
- (5) "Certified applicator" means any individual who is certified under this chapter as qualified to use or supervise the use of any restricted use pesticide and has been issued a certificate as evidence of the individual's qualifications.
- (6) "Private applicator" means a certified applicator who uses or supervises the use of any restricted use pesticide for purposes of producing any agricultural commodity on property owned or rented by the employer or the applicator, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.
- (7) "Commercial applicator" means a certified applicator, whether or not a private applicator with respect to some uses, who uses or supervises the use of any restricted use pesticide for any purpose or on any property other than as provided by subdivision (6).
- (8) "Defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.
- (9) "Desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.
- (10) "Device" means any instrument or contrivance, other than a firearm, that is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life other than man, bacteria, virus, or other microorganism on or in living man or other living animals. This term does not include equipment used for the application of pesticides when sold separately from the pesticides.

(11) "Distribute" means to offer for sale, sell, exchange, barter, or otherwise supply or offer to supply a pesticide.

(12) "Environment" includes water, air, land, and all plants and man and other animals living in water, air, or on land and the interrelationships that exist among these.

(13) "Equipment" means any type of ground, water, or aerial apparatus or contrivance using motorized, mechanical, or pressurized power, used to apply any pesticide.

(14) "Fungus" means any nonchlorophyll-bearing plant of a lower order than mosses and liverworts, including rust, smut, mildew, mold, yeast, and bacteria, except those on or in living man or other animals, and those on or in processed food, beverages, or pharmaceuticals.

(15) "Insect" means any small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six (6) legged, usually winged forms, including beetles, bugs, bees, flies, and other allied classes of arthropods whose members are wingless and usually have more than six (6) legs, including spiders, mites, ticks, centipedes, and wood lice.

(16) "Licensed pesticide business" means any licensed person that owns, operates, or manages a business that is engaged in or professes to be engaged in:

(A) using any pesticide, including restricted use pesticides;
or

(B) making diagnostic inspections or reports to determine infestations of wood destroying pests.

(17) "Licensed applicator for hire" means any licensed certified commercial applicator who is employed by a licensed pesticide business to use or to supervise the use of any pesticide on the property of another and who has assumed direct responsibility for the use or supervision of the use of pesticides by the business.

(18) "Licensed public applicator" means a licensed certified commercial applicator who uses or supervises the use of a restricted use pesticide as an employee of a state agency, municipal corporation, or other governmental agency. The term includes a commercial applicator using a pesticide in a potentially hazardous situation or site as determined by the board.

(19) "Nematode" means invertebrate animals of the phylum nemathelminthes and class nematoda. These are unsegmented round worms with elongated, fusiform, or sac-like bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts. Nematodes may also be called nemas or eelworms.

(20) "Permit" means a written certificate issued by the state chemist or the state chemist's authorized agent to a private applicator, authorizing the purchase, possession, or use of restricted use pesticides.

(21) "Person" means any individual, partnership, association,

fiduciary, corporation, or any organized group of persons whether incorporated or not.

(22) "Pest" means:

- (A) any insect, rodent, nematode, fungus, or weed; or
- (B) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism (except viruses, bacteria, or other microorganisms on or in living man or other living animals) that is declared to be a pest by the administrator of the United States Environmental Protection Agency or by the board.

(23) "Pesticide" means:

- (A) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; or
- (B) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

(24) "Plant regulator" means any substance or mixture of substances intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation or for otherwise altering the behavior of plants or the produce of plants. The term does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments.

(25) "Property" means all land and water areas, including airspace, and all plants, animals, structures, buildings, contrivances, and machinery, appurtenant to or situated on land and water areas, fixed or mobile, including any used for transportation.

(26) "Restricted use pesticide" means:

- (A) any pesticide classified as restricted by the Administrator of the United States Environmental Protection Agency; or
- (B) a pesticide that the board has determined to be unduly hazardous to persons, animals, plants, wildlife, waters, or lands other than the pests the pesticide is intended to prevent, destroy, control, or mitigate.

(27) "Unreasonable adverse effects on the environment" means an unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.

(28) "Weed" means any plant which grows where it is not wanted.

(29) "Wildlife" means all living things that are not human, domesticated, or pests. This term includes mammals, birds, reptiles, and aquatic life.

(30) "Certificate of financial responsibility" means a notarized statement from an officer of a bank or other financial institution attesting to the fact that a licensee under this chapter has adequate financial resources equal to the amount of liability insurance or bonding required by rule under section 13 of this chapter to protect persons who may suffer legal damages as a

result of the applicator's pesticide operations or the pest inspector's inspections.

(31) "Registered pesticide dealer" means any person who distributes any restricted use pesticide.

(32) "Licensed applicator not for hire" means a licensed certified commercial applicator who is employed by a private employer to use or supervise the use of a restricted use pesticide only on the property of the employer. The term includes a commercial applicator using a pesticide in a potentially hazardous situation or site as determined by the board.

(33) "Pesticide consultant" means a person who:

- (A) offers or supplies technical advice to;
- (B) supervises;
- (C) aids; or
- (D) makes recommendations to;

another person concerning the use of a pesticide as part of business.

(34) "Pesticide formulation" means a pesticide product comprised of all active ingredients and inert ingredients.

(35) "Pesticide product" means a pesticide or device offered for distribution or use, including any labeling.

(36) "Registered technician" means a person who:

- (A) is not licensed under this chapter;
- (B) has registered with the state chemist; and
- (C) is authorized to engage in pesticide use and related activities under the direct supervision of a licensed and certified applicator.

(37) "Use" means an act of handling, releasing, or exposing individuals or the environment to a pesticide. The term includes the following:

- (A) Application or supervision of an application of a pesticide, including mixing or loading the pesticide.
- (B) Storage of pesticides and pesticide containers by the intended applicator of the pesticides.
- (C) Transportation of pesticides and pesticide containers by the intended applicator of the pesticides.
- (D) Disposal of pesticides and pesticide containers by the intended applicator of the pesticides.

(38) "Licensed pest inspector" means an individual licensed under this chapter to make diagnostic inspections or reports to determine infestations of wood destroying pests on the property of another person and meets the requirements under section 13 of this chapter.

(Formerly: Acts 1975, P.L.134, SEC.1.) As amended by P.L.113-1990, SEC.28; P.L.1-1993, SEC.165; P.L.138-1996, SEC.5.

IC 15-3-3.6-3

Certification and registration requirement; compliance

Sec. 3. A person required to be certified or registered under this chapter may not use or supervise the use of any pesticide and may

not make diagnostic inspections or reports to determine infestations of wood destroying pests, unless the person complies with the certification or registration requirements under this chapter or any other requirements determined by the state chemist to be necessary to prevent unreasonable adverse effects on the environment.

(Formerly: Acts 1975, P.L.134, SEC.1.) As amended by P.L.113-1990, SEC.29; P.L.138-1996, SEC.6.

IC 15-3-3.6-4

Regulations; restricted pesticide use classification

Sec. 4. (a) The board may under IC 4-22-2 adopt rules prescribing policies and procedures relating to:

- (1) the use and application of pesticides; and
- (2) diagnostic inspections and reports for wood destroying pests.

(b) For the purpose of uniformity and in order to enter into both cooperative and reciprocal agreements, the board may adopt restricted use pesticide classifications as determined by the United States Environmental Protection Agency. The state chemist may under IC 4-22-2 adopt additional rules as required to accomplish the purpose of this chapter.

(c) Rules adopted under this chapter may not permit any pesticide use that is prohibited by federal law and regulations or orders issued under federal law.

(Formerly: Acts 1975, P.L.134, SEC.1.) As amended by P.L.113-1990, SEC.30; P.L.138-1996, SEC.7.

IC 15-3-3.6-5

Categories and qualifications for certification and licensure; certification of applicators

Sec. 5. (a) The state chemist shall establish by rule categories and qualifications to certify and license persons to use pesticides and to make diagnostic inspections and reports for wood destroying pests under this chapter. Each category shall be subject to separate testing procedures and requirements. No person shall be required to pay an additional license fee if the person desires to be licensed in more than one (1) of the license categories provided for by the state chemist under this section.

(b) The state chemist, in adopting rules under this chapter, shall prescribe standards for the certification of persons who use pesticides or who make diagnostic inspections and reports for wood destroying pests. The standards shall relate to the use and handling of pesticides, or to the use and handling of the pesticide or class of pesticides covered by the individual's certification, and shall be relative to the hazards involved. In determining standards, the state chemist shall consider the characteristics of the pesticide formulation such as the acute dermal and inhalation toxicity, the persistence, mobility, and susceptibility to biological concentration, the use experience that may reflect an inherent misuse or an unexpected good safety record which does not always follow laboratory

toxicological information, the relative hazards of patterns of use such as granular soil applications, ultra-low volume or dust aerial applications, or air blast sprayer applications, and the extent of the intended use. The state chemist shall observe the relevant regulations of Section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135 et seq.).

(c) The state chemist may require a person certified under this chapter as a commercial applicator or a private applicator to renew the person's certification, under requirements and standards established by the state chemist, to assure that the person maintains a level of competence and ability to use pesticides safely and properly.

(Formerly: Acts 1975, P.L.134, SEC.1.) As amended by P.L.113-1990, SEC.31; P.L.138-1996, SEC.8.

IC 15-3-3.6-6

Pesticide business license

Sec. 6. (a) A person may not engage in or profess to engage in the business of:

- (1) using a pesticide; or
- (2) making diagnostic inspections or reports to determine infestations of wood destroying pests;

on the property of another for hire at any time without a pesticide business license issued by the state chemist. The state chemist shall require an annual license fee of thirty dollars (\$30) for each pesticide business license issued.

(b) A pesticide business license must be obtained for each business location from which pesticide use or application is conducted.

(c) The application for a license shall be made in writing on a form provided by the state chemist. Each application shall contain information regarding the applicant's qualifications and proposed operations, license category or categories the applicant is applying for, and other information necessary for the administration of this chapter.

(d) The state chemist may not issue a pesticide business license until the applicant or a pesticide applicator in the applicant's hire who uses or supervises the use of a pesticide on the property of another is certified by passing an examination to demonstrate to the state chemist the applicant's or applicator's knowledge of the use of pesticides under the category for which the applicant or applicator has applied, and the applicant's or applicator's knowledge of the nature and effect of pesticides the applicant or applicator may apply under the categories. At least one (1) licensed applicator for hire must be associated with each location from which pesticides are used for hire.

(e) The state chemist may renew any business license.

(f) If:

- (1) the state chemist finds the applicant qualified to engage in the business of using pesticides on the property of another;

- (2) the applicant files evidence of financial responsibility required under section 13 of this chapter; and
- (3) the applicant applying for a license involving aerial application of pesticides has met all of the requirements of:
 - (A) the Federal Aviation Administration;
 - (B) the Indiana department of transportation; and
 - (C) any other applicable federal or state statutes or regulations to operate the equipment described in the application;

the state chemist shall issue a pesticide business license limited to the categories for which the applicant or a pesticide applicator in the applicant's hire is qualified. The license shall expire January 1 of the year following issue unless it has been revoked or suspended earlier by the state chemist. Any surety bond or certificate of liability insurance in force or certificate of financial responsibility required under section 13 of this chapter must be maintained and in effect on a continuing basis.

(g) The state chemist may limit a license or the operation of a business to the use of certain pesticides, or to certain areas, or to certain types of equipment if the applicant is only so qualified.

(h) If a license is not issued as applied for, the state chemist shall inform the applicant in writing of the reasons the license was not issued.

(Formerly: Acts 1975, P.L.134, SEC.1.) As amended by Acts 1980, P.L.74, SEC.409; P.L.18-1990, SEC.282; P.L.113-1990, SEC.32; P.L.138-1996, SEC.9.

IC 15-3-3.6-7

Licensed applicators and pest inspectors; applicators and pest inspectors for hire

Sec. 7. A person may not:

- (1) act as an employee of a licensed pesticide business and use or supervise the use of a pesticide on another person's property; or
- (2) make diagnostic inspections or reports to determine infestations of wood destroying pests on another person's property;

without having obtained a license to act as a licensed applicator for hire or a licensed pest inspector from the state chemist. However, a competent person who is not a licensed applicator for hire may use a pesticide under the direct supervision of a licensed applicator. An applicator's license and a pest inspector's license shall be in addition to any other license or permit required by law for the operation or use of any equipment.

(Formerly: Acts 1975, P.L.134, SEC.1.) As amended by Acts 1980, P.L.74, SEC.410; P.L.18-1990, SEC.283; P.L.113-1990, SEC.33; P.L.138-1996, SEC.10.

IC 15-3-3.6-7.1

Licensed applicators not for hire

Sec. 7.1. (a) Except as provided in subsection (b), a person may not act as a licensed applicator not for hire unless the person has obtained a license from the state chemist.

(b) A person who is not a licensed applicator not for hire may use a pesticide if the person is under the direct supervision of a licensed applicator not for hire.

As added by P.L.113-1990, SEC.34.

IC 15-3-3.6-8

Public employees; examinations; limited licenses

Sec. 8. (a) All state agencies, municipal corporations, or any other governmental agency shall be subject to this chapter and rules adopted under this chapter concerning the application of pesticides.

(b) Except as provided in subsection (c), a person may not act as a licensed public applicator unless the person has obtained a license from the state chemist.

(c) A person who is not a licensed public applicator may use a pesticide if the person is under the direct supervision of a licensed public applicator.

(d) The public applicator's license shall be valid only when the applicator is using or supervising the use of pesticides by public agencies. Government research personnel shall not be exempt from this licensing requirement when using pesticides.

(Formerly: Acts 1975, P.L.134, SEC.1.) As amended by P.L.18-1990, SEC.284; P.L.113-1990, SEC.35.

IC 15-3-3.6-8.1

Applications for licensure

Sec. 8.1. (a) A person applying for a license described under section 7, 7.1, or 8 of this chapter must:

(1) submit an application to the state chemist on a form provided by the state chemist;

(2) pass the appropriate examination provided under section 5 of this chapter;

(3) except for a person applying for a licensed public applicator's license, submit a fee of thirty dollars (\$30) to the state chemist; and

(4) if the person will engage in the aerial application of pesticides, submit proof to the state chemist that the person has satisfied aerial application requirements under applicable state and federal laws.

(b) If a person meets the requirements under subsection (a), the state chemist shall issue the appropriate license to the person.

(c) If the state chemist does not issue a license to a person that applied for a license described under subsection (a), the state chemist shall inform the person in writing of the reason the license was not issued.

(d) A person that has been issued a license under subsection (b):

(1) shall notify the state chemist in writing within ten (10) days after a change in or termination of the person's employment as

a licensed applicator for hire, a licensed applicator not for hire, or a licensed public applicator; and

(2) may apply to the state chemist to transfer or amend the person's license by submitting an updated application form described under subsection (a)(1).

(e) A license issued under subsection (b):

(1) expires January 1 of each year; and

(2) may be renewed by the person holding the license if the person:

(A) submits a renewal application on a form provided by the state chemist; and

(B) except for a person renewing a licensed public applicator's license, pays a thirty dollar (\$30) renewal fee; before January 1.

As added by P.L.113-1990, SEC.36.

IC 15-3-3.6-8.3

Pesticide consultants; registration

Sec. 8.3. (a) A person may not act as a pesticide consultant unless the person has registered with the state chemist.

(b) To register with the state chemist as a pesticide consultant, a person must:

(1) submit satisfactory proof to the state chemist that the person is qualified to make recommendations and offer advice concerning the use of pesticides; and

(2) except for a person who is a full-time employee of a federal, state, or local government agency, pay an annual fee of thirty dollars (\$30) to the state chemist.

As added by P.L.113-1990, SEC.37.

IC 15-3-3.6-9

Private applicator; certification

Sec. 9. (a) A private applicator may not be issued a permit to use a restricted use pesticide without first complying with the certification requirements, including passing an examination, determined by the state chemist necessary to prevent unreasonable adverse effects on the environment, including injury to the applicator or other persons.

(b) Certification standards to determine the person's competency with respect to the use and handling of the pesticide or class of pesticides that the private applicator is to be certified to use, shall be relative to hazards as described in section 5 of this chapter. In determining these standards, the state chemist shall observe those standards for private applicator certification provided by the U.S. Environmental Protection Agency.

(c) A fee of ten dollars (\$10) shall be paid to the state chemist by each person applying for a certification as a private applicator under this section. If the state chemist does not certify the private applicator under this section, the state chemist shall inform the applicant of the reasons the applicant was not certified and return the applicant's

application fee. The state chemist may require additional knowledge to ensure that applicators continue to meet the requirements of changing technology and to assure a continuing level of competence and ability to use pesticides safely and properly.

(Formerly: Acts 1975, P.L.134, SEC.1.) As amended by P.L.113-1990, SEC.38.

IC 15-3-3.6-10

Exemptions from IC 15-3-3.6-6

Sec. 10. Section 6 of this chapter relating to licenses and requirements for their issuance does not apply to:

(1) any farmer applying pesticides for the farmer or with ground equipment or manually for the farmer's neighbors if:

(A) the farmer operates farm property and operates and maintains pesticide application equipment primarily for the farmer's own use;

(B) the farmer is not engaged in the business of applying pesticides for hire and the farmer does not publicly profess to be a pesticide business;

(C) the farmer operates the farmer's pesticides application equipment only in the vicinity of the farmer's own property and for the accommodation of the farmer's neighbors; and

(D) the farmer is certified as a private applicator if using restricted use pesticides;

(2) a doctor of veterinary medicine using pesticides as an incidental part of the veterinarian's practice if the veterinarian is not regularly engaged in or does not profess to be engaged in the business of using pesticides for hire; and

(3) research personnel applying pesticides only to bona fide experimental plots.

(Formerly: Acts 1975, P.L.134, SEC.1.) As amended by P.L.113-1990, SEC.39.

IC 15-3-3.6-10.1

Registration of registered technicians

Sec. 10.1. The state chemist shall establish and administer a program to register registered technicians.

As added by P.L.113-1990, SEC.40.

IC 15-3-3.6-11

Disposition of fees

Sec. 11. All fees collected by the state chemist under this chapter shall be paid to Purdue University and deposited in a special restricted account so designated by the treasurer of the board of trustees of Purdue University. From this account the treasurer shall pay the expenses incurred in carrying out this chapter, including employment of inspectors, investigators, researchers, analysts, administrators and clerical and service staff and expenses, in conducting and reporting inspections and investigations, purchasing supplies and services, providing necessary facilities and remodeling

and other expenses of Purdue University agricultural programs authorized by law and in support of the purposes of this chapter. The treasurer is not required to use any other funds, except those collected under this chapter, to defray any expenses incurred in the administration of this chapter. The dean of agriculture shall make an annual financial report to the governor showing total receipts and expenditures of all fees received under this chapter.

(Formerly: Acts 1975, P.L.134, SEC.1.) As amended by P.L.113-1990, SEC.41; P.L.40-1993, SEC.12.

IC 15-3-3.6-12

Restricted use pesticide dealer; registration; fees; exemptions

Sec. 12. (a) Each person who is a restricted use pesticide dealer shall register with the state chemist. Registration shall be required for each business location distributing restricted use pesticides and shall be accomplished on a form to be provided by the state chemist. Each registration shall expire January 1 following issuance unless the registration is renewed annually. A registration fee of thirty dollars (\$30) shall accompany the application.

(b) This section does not apply to:

- (1) a licensed pesticide business that sells pesticides only as an integral part of its pesticide application service when the pesticides are dispensed only through equipment used for this pesticide application;
- (2) any federal, state, county, or municipal agency that provides pesticides only for its own programs; or
- (3) any person who is the final purchaser of a pesticide for application to property or property rights owned, leased, or otherwise acquired by the person.

(c) Each registered pesticide dealer is responsible for the acts of each person employed by the dealer in the solicitation and sale of restricted use pesticides and all claims and recommendations for use of pesticides. The dealer's registration shall be subject to denial, suspension, or revocation after a hearing for any violation of this chapter whether committed by the dealer, or by the dealer's officer, agent or employee.

(Formerly: Acts 1975, P.L.134, SEC.1.) As amended by P.L.113-1990, SEC.42.

IC 15-3-3.6-12.1

Late fees; penalties

Sec. 12.1. A person that:

- (1) is required to pay a fee under this chapter to the state chemist; and
 - (2) does not pay the fee before the date the fee is due;
- shall pay a penalty fee to the state chemist equal to one hundred percent (100%) of the required fee when the person pays the required fee.

As added by P.L.113-1990, SEC.43.

IC 15-3-3.6-13

Surety bond, certificate of liability insurance, or certificate of financial responsibility; prerequisite for pesticide operator's or pest inspector's license

Sec. 13. (a) The state chemist may not issue a pesticide business license or a pest inspector license until the applicant for the license has furnished a surety bond, a certificate of liability insurance in force, or a certificate of financial responsibility to protect persons who may suffer legal damages as a result of the pesticide operations or pest inspections of the applicant. If the surety bond, liability insurance, or financial responsibility is not maintained at all times during the licensing period, the pesticide business license, pest inspector license, and any associated commercial applicator licenses are invalid. The applicant may not engage in or profess to be engaged in the business of using pesticides or pest inspection until the financial responsibility is brought into compliance and the applicant's license is reinstated by the state chemist.

(b) Nothing in this chapter relieves any person from liability for any damage to the person or property of another caused by the use of pesticides even though the use conforms to the rules of the state chemist.

(Formerly: Acts 1975, P.L.134, SEC.1.) As amended by P.L.113-1990, SEC.44; P.L.138-1996, SEC.11.

IC 15-3-3.6-14

Violations; warning, citation, or imposition of penalties

Sec. 14. Subject to section 14.5 of this chapter, the state chemist under IC 4-21.5-3-6 may warn, cite, or impose a civil penalty on a person for a violation under this chapter. The state chemist may also deny, suspend, revoke, or modify any provision of any license, permit, or certification issued under this chapter if the state chemist finds that the applicant or the holder of a license or permit has committed any of the following acts, each of which is a violation of this chapter:

- (1) Made false or fraudulent claims through any media misrepresenting the effect of pesticides or methods to be utilized.
- (2) Recommended, used, or supervised the use of any registered pesticide in a manner inconsistent with its labeling approved by the United States Environmental Protection Agency or Indiana state registration for that pesticide, or in violation of the United States Environmental Protection Agency or Indiana state restrictions on the use of that pesticide.
- (3) Used known ineffective or improper pesticides.
- (4) Operated faulty or unsafe equipment.
- (5) Operated in a careless or negligent manner.
- (6) Neglected or, after notice, refused to comply with this chapter, the rules adopted under this chapter, or of any lawful order of the state chemist.
- (7) Refused or neglected to keep and maintain the records

required by this chapter, or to make reports and supply information when required.

(8) Made false or fraudulent records, invoices, or reports.

(9) Engaged in or professed to be engaged in the business of:

(A) using a pesticide; or

(B) making a diagnostic inspection to determine infestations of a wood destroying pest;

for hire on the property of another without having a pesticide business license.

(10) Used a restricted use pesticide without having a licensed applicator or a licensed certified operator in direct supervision.

(11) Used fraud or misrepresentation in making an application for, or renewal of, a license, permit, registration, or certification.

(12) Refused or neglected to comply with any limitations or restrictions on or in a duly issued license, permit, registration, or certification.

(13) Aided or abetted a person to evade the provisions of this chapter, conspired with a person to evade the provisions of this chapter, or allowed a license, permit, registration, or certification to be used by another person.

(14) Made false or misleading statements during or after an inspection concerning any infestation or infection of pests.

(15) Impersonated any federal, state, county, or city inspector, investigator, or official.

(16) Knowingly purchased or used a pesticide that was not registered under IC 15-3-3.5.

(17) Failed to continuously maintain financial responsibility required under section 13 of this chapter.

(Formerly: Acts 1975, P.L.134, SEC.1.) As amended by P.L.113-1990, SEC.45; P.L.138-1996, SEC.12.

IC 15-3-3.6-14.5

Violations; civil penalties

Sec. 14.5. (a) The state chemist may impose civil penalties only in accordance with the schedule of civil penalties adopted by the board.

(b) The board shall establish a schedule of civil penalties that may be imposed under section 14 of this chapter by rule adopted under IC 4-22-2. The rule adopted under this subsection may not provide for a civil penalty that exceeds the following:

(1) For a violation committed by a person who is required to be certified as a private applicator, one hundred dollars (\$100).

(2) For a violation by a person who is not described in subdivision (1), the following:

(A) Two hundred fifty dollars (\$250) for a person's first violation.

(B) Five hundred dollars (\$500) for a person's second violation.

(C) One thousand dollars (\$1,000) for a person's third

violation and each subsequent violation.

(c) If a violation is of a continuing nature, the state chemist may impose a civil penalty for each day that the violation occurred.

(d) A proceeding under IC 4-21.5-3 that involves the imposition of a civil penalty may be consolidated with any other proceeding commenced under IC 4-21.5 to enforce this chapter or the rules adopted under this chapter.

(e) Money collected for civil penalties imposed under section 14 of this chapter shall be credited to the agricultural extension service. The money may be used only for the purpose of providing education about pesticides.

As added by P.L.113-1990, SEC.46. Amended by P.L.138-1996, SEC.13.

IC 15-3-3.6-15

Review of state chemist's action; hearings

Sec. 15. (a) Any person aggrieved by any action of the state chemist may obtain a review by filing with the board, within thirty (30) days notice of the action, a written petition asking that the action of the state chemist be set aside. A copy of the petition shall be furnished to the state chemist by the board within seven (7) days of filing. Within fifteen (15) days thereafter the state chemist shall certify and file with the board a transcript of any record pertaining thereto, including a transcript of evidence received.

(b) Whenever a hearing is provided for or authorized to be held by the board, the board may designate a person or persons as its agents or representatives to conduct such hearings. Such agents or representatives shall conduct such hearings in the manner provided by IC 4-21.5-3.

(c) The board shall, after hearing the appeal, have jurisdiction to affirm, set aside, or modify the action of the state chemist, except that the findings of the state chemist as to the facts, supported by the substantial evidence, shall be conclusive.

(d) Any person aggrieved by any action of the board may obtain a review under IC 4-21.5-5.

(Formerly: Acts 1975, P.L.134, SEC.1.) As amended by P.L.7-1987, SEC.65.

IC 15-3-3.6-16

Violations; misdemeanor; injunctions

Sec. 16. (a) A person who violates this chapter or impedes, hinders, or prevents the state chemist or the state chemist's authorized agent in performance of the state chemist's duty commits a Class C misdemeanor.

(b) A person who knowingly or intentionally violates section 14(9) of this chapter after the state chemist has issued written notification to that person regarding a previous violation of section 14(9) of this chapter commits a Class A misdemeanor.

(c) The state chemist may bring an action to enjoin the violation or threatened violation of this chapter or any rule made under this

chapter. A court may not allow the recovery of damages for administrative action taken if the court finds that there was probable cause for the action.

(Formerly: Acts 1975, P.L.134, SEC.1.) As amended by Acts 1978, P.L.2, SEC.1517; P.L.113-1990, SEC.47; P.L.138-1996, SEC.14.

IC 15-3-3.6-16.1

Confidential information

Sec. 16.1. The state chemist may, by rule, declare that information required to be submitted under this chapter is confidential.

As added by P.L.113-1990, SEC.48.

IC 15-3-3.6-17

Subpoena power

Sec. 17. The state chemist may request issuance of subpoenas to compel the attendance of witnesses or the production of books, documents and records anywhere in the state in any hearing affecting the authority or privilege granted by a license, certificate, registration, or permit issued under this chapter.

(Formerly: Acts 1975, P.L.134, SEC.1.) As amended by P.L.113-1990, SEC.49.

IC 15-3-3.6-18

Inspection powers of state chemist; prosecution procedure

Sec. 18. (a) The state chemist may enter upon any public or private property at reasonable times, in order to do the following:

- (1) Observe the use and application of a pesticide.
- (2) Inspect any equipment subject to this chapter.
- (3) Inspect and sample property actually or reported to be exposed to pesticides.
- (4) Inspect storage or disposal areas.
- (5) Inspect or investigate complaints of injury to humans or property.
- (6) Sample pesticides being used or to be used.

(b) If the state chemist is denied access to any property for the purposes set forth in this chapter, the state chemist may, upon showing a need, apply to any court of competent jurisdiction for a search warrant authorizing access to the property for said purposes. The court may, upon such application and after finding a need, issue the search warrant for the purposes requested.

(c) Each prosecuting attorney to whom any violation of this chapter is reported may institute and prosecute the violation in a court of competent jurisdiction of that county without delay. The state chemist may apply for and the court grant a temporary or permanent injunction restraining any person from violating or continuing to violate this chapter or any rule adopted under this chapter notwithstanding the existence of other remedies at law. The injunction may be issued without bond.

(Formerly: Acts 1975, P.L.134, SEC.1.) As amended by P.L.113-1990, SEC.50.

IC 15-3-3.6-19

Records of pesticide use and diagnostic inspections

Sec. 19. Commercial applicators and licensed pest inspectors shall maintain records with respect to applications of restricted use pesticides and diagnostic inspections to determine infestations of wood destroying pests. Relevant information the state chemist may deem necessary to further the purposes of this chapter may be specified by rule. The state chemist may require certified applicators to maintain records related to applications of state restricted pesticide uses. These records shall be kept for a period of two (2) years from the date of the application of the pesticide to which the records refer, and the state chemist shall be provided access to the records by the commercial applicator.

(Formerly: Acts 1975, P.L.134, SEC.1.) As amended by P.L.113-1990, SEC.51; P.L.1-1991, SEC.120; P.L.138-1996, SEC.15.

IC 15-3-3.6-20

Pesticide accident reports

Sec. 20. The state chemist may by regulation require the reporting of significant pesticide accidents or incidents. Any person claiming damages from a pesticide accident shall file a claim on a form provided by a state chemist. This report must be filed within sixty (60) days after the date that damages occurred. If a growing crop is alleged to have been damaged, the report must be filed before twenty-five percent (25%) of the crop has been harvested. The state chemist shall, within seven (7) days after the receipt of such statement, notify the licensee and the owner or lessee of the property or other persons who may be charged with the responsibility for the damages claimed, and furnish copies of such statements as may be requested.

(Formerly: Acts 1975, P.L.134, SEC.1.)

IC 15-3-3.6-21

Cooperation with other agencies

Sec. 21. The state chemist may cooperate with, and enter into agreements with, any other agency of this state, any federal agency, or any other state agency or nongovernmental organization for the purpose of carrying out this chapter to:

- (1) secure uniformity of rules;
- (2) cooperate in the enforcement of the federal pesticide control laws through the use of state or federal personnel and facilities and to implement cooperative enforcement programs;
- (3) develop and administer state plans for certification of applicators consistent with federal standards;
- (4) contract or cooperate with agencies or organizations for the purpose of training applicators;
- (5) contract for monitoring pesticides for the national plan;
- (6) prepare and submit state plans to meet federal certification standards;

(7) regulate certified applicators; and
(8) make reports to the United States Environmental Protection Agency as the agency may require.
(Formerly: Acts 1975, P.L.134, SEC.1.) As amended by P.L.113-1990, SEC.52.

IC 15-3-3.6-22

Reciprocity with other states

Sec. 22. The state chemist may waive all or part of the requirements provided for in sections 3, 5, 6, 7, 7.1, 8, 8.1, 8.3, 9, and 12 of this chapter on a reciprocal basis with any other state agency or federal agency that has substantially the same standards.
(Formerly: Acts 1975, P.L.134, SEC.1.) As amended by P.L.113-1990, SEC.53.

IC 15-3-3.6-23

Instruction and training in pesticide use

Sec. 23. In concurrence with the state chemist, the Purdue University cooperative extension service shall organize and conduct programs of instruction and training in areas of knowledge required in this chapter. Where appropriate and feasible, they shall draw upon the resources and expertise of other educational institutions and the private sector in this effort.
(Formerly: Acts 1975, P.L.134, SEC.1.) As amended by P.L.40-1993, SEC.13.

IC 15-3-3.6-24

Storage or pollution violation; regulations

Sec. 24. A person may not transport, store, or dispose of any pesticide or pesticide containers in a manner as to cause injury to humans, beneficial vegetation, crops, livestock, wildlife, beneficial insects or to pollute any waterway in a way harmful to any wildlife in a waterway. The board may adopt rules governing the storage and disposal of pesticides or pesticide containers. In determining these standards, the board shall take into consideration any regulations issued by the United States Environmental Protection Agency.
(Formerly: Acts 1975, P.L.134, SEC.1.) As amended by P.L.113-1990, SEC.54.

IC 15-3-3.6-25

Delegation of powers and duties by state chemist

Sec. 25. The functions vested in the state chemist by this chapter may be delegated by him to such employees or agents as he may designate.
(Formerly: Acts 1975, P.L.134, SEC.1.)

IC 15-3-3.6-26

Licenses or certificates not transferable

Sec. 26. (a) A license issued under this chapter is not transferable except in the event of disability or death of the licensee. The state

chemist may transfer a license by issuing a temporary permit to provide for the operation of the business until the expiration of the permanent license.

(b) A certificate issued under this chapter is not transferable.

(Formerly: Acts 1975, P.L.134, SEC.1.) As amended by P.L.113-1990, SEC.55.

IC 15-3-3.6-27

Regulation by political subdivisions; variances

Sec. 27. (a) A political subdivision (as defined in IC 36-1-2-13) does not have authority to regulate by ordinance the use or application of pesticides.

(b) A political subdivision may, by resolution, petition the board for a hearing to allow a variance from a rule of the board because of special circumstances relating to the use or application of a pesticide. If such a petition is received, the board shall hold a public hearing to consider allowing the variance requested. The public hearing shall be conducted in an informal manner. IC 4-21.5 does not apply to the public hearing under this section.

(c) The board may grant a variance requested under this section with or without changes.

As added by P.L.98-1992, SEC.1.